

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Mario Fontonez Stevenson,)	
)	
Petitioner,)	
)	
vs.)	Case No. 3:07cv21
)	
State of North Dakota,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Before the court is petitioner Mario Fontonez Stevenson's second petition for writ of habeas corpus under 28 U.S.C. § 2254 (Doc. #1). On February 9, 2007, the magistrate judge conducted a preliminary review of Stevenson's habeas petition, filed in Case 3:07cv08. The magistrate judge recommended the petition be dismissed for failure to meet the "in custody" requirement and the time limitation for habeas relief. On February 21, 2007, Stevenson filed a second habeas application. This case, 3:07cv21, was opened as a result of his second filing. On February 27, 2007, Stevenson submitted his objection to the magistrate judge's recommendation in Case 3:07cv08. His objection, and the report and recommendation, are still pending.

After reviewing the second application, the magistrate judge finds Stevenson's petition concerns the same underlying conviction addressed in the court's recommendation in Case 3:07cv08. To the extent that Stevenson has filed a new habeas claim, the magistrate judge again **RECOMMENDS** the petition be **DENIED** with prejudice, for the same reasons set forth in the recommendation filed in Case 3:07cv08 (Doc. #3). In addition, Stevenson's second application contains nothing that would alter the magistrate judge's recommendation in Case 3:07cv08.

Pursuant to Local Rule 72.1(E)(4), any party may object to this recommendation within ten (10) days after being served with a copy.

Dated this 22nd day of March, 2007.

/s/ Karen K. Klein
Karen K. Klein
United States Magistrate Judge